IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6079 of 2007()

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CRIME NO.339/07 OF BALUSSERY POLICE STATION

: PETITIONER/ACCUSED

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KUNYEKKINI, AGED 61 YEARS,
S/O CHATHU, NADUKKANDI MEETHAL,
AVIDANNOOR AMSOM, PUNATHU DESOM,
POONATHU P.O., NADUVANNOOR,
KOZHIKODE DISTRICT.

BY ADV. SRI.NIDHI BALACHANDRAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
BALUSSERY POLICE STATION,
KOZHIKODE DISTRICT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**B.A.No.6079 of 2007**

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**Dated this the 8th day of October, 2007**

**ORDER**

Application for anticipatory bail. The petitioner is the 2nd accused. He faces allegations under the Kerala Abkari Act. He along with the 1st accused was allegedly engaged in the act of distillation of arrack on 2.9.07 in his property. The local people raised objections to the activity and allegedly restrained both the accused and informed the police. By the time the police reached the scene of the crime, the petitioner escaped and could not be handed over to the police. The 1st accused was arrested. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has been unnecessarily arrayed as accused. He may be saved of the undeserved trauma of arrest and incarceration.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the contemporaneous earlier documents do convincingly reveal the presence and involvement of the petitioner at the scene of the crime. There are no circumstances justifying or warranting the invocation of the

extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail, submits the learned Public Prosecutor .

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. There is no reason at all to assume that the allegations against the petitioner are being raised with any vexatious or mala fide intent. I am satisfied that this is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course. I find no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

**(R.BASANT, JUDGE)**

rtr/-